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**IN THE UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF NEW YORK**

KEWAZINGA CORP.,)	
)	
Plaintiff,)	Civil Action No. 1:20-cv-01106-LGS
)	
vs.)	REDACTED VERSION
)	
GOOGLE LLC,)	
)	
Defendant.)	
)	

**PLAINTIFF KEWAZINGA CORP.'S LOCAL CIVIL RULE 56.1 STATEMENT OF
MATERIAL FACTS IN SUPPORT OF KEWAZINGA'S CROSS-MOTION FOR
SUMMARY JUDGMENT OF NO EQUITABLE ESTOPPEL**

Pursuant to Local Rule 56.1, Kewazinga hereby identifies the following material facts as to which Kewazinga contends there is no genuine issue to be tried as to its cross-motion for summary judgment of no equitable estoppel. Pursuant to Fed. R. Civ. P. 56(c) and Local Rule 56.1(d), Kewazinga supports factual statements herein with citations to exhibits attached to the supporting Declaration of Saunak Desai, as well as evidence that is not attached as exhibits in order to comply with the Court's August 4, 2020 Order (D.I. 92). Kewazinga will provide the supporting evidence that has not been submitted as exhibits if requested by the Court.

1. David Worley, Scott Sorokin, and Andrew Weber came together in 1997 to form Kewazinga and collaborate on ideas related to navigable telepresence technology. Desai Decl., Ex. 1 (Worley Tr.) at 47:19-49:12.

2. By the early 2000's, Kewazinga was commercializing this technology throughout the U.S. by producing content for partners including NBC Sports, ABC Sports, ESPN, the Golf Channel, and Major League Baseball. KEWAZINGA-G-0003007 at 3008.

3. Kewazinga filed U.S. Provisional Patent Application No. 60/080,413. '226 patent at pg. 1, "Related U.S. Application Data."

4. Kewazinga filed U.S. Patent Application No. 09/283,413 (which claims priority to U.S. Provisional Patent Application No. 60/080,413) on April 1, 1999. '226 patent at pg. 1. This application issued to Kewazinga Corp. as the '226 patent on March 18, 2003. *Id.*

5. Kewazinga filed U.S. Patent Application No. 09/419,274 (which claims priority to U.S. Provisional Patent Application No. 60/080,413) on October 15, 1999. '325 patent at pg. 1. This application issued to Kewazinga Corp. as the '325 patent on February 18, 2003. *Id.*

6. In 2005, Kewazinga reached out to Google to seek a partnership because Kewazinga believed that its intellectual property, technology, and forward-looking business

concepts could be valuable and beneficial to Google. Desai Decl., Ex. 1 (Worley Tr.) at 70:9-22; Desai Decl., Ex. 5 (Smalheiser Tr.) at 70:16-71:10. [REDACTED]

[REDACTED] Desai Decl., Ex. 6 (GOOG-KZGA-00002374).

7. [REDACTED]

[REDACTED] Desai Decl., Ex. 6 (GOOG-KZGA-00002374) at 2375. [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 2375-76.

8. [REDACTED]

[REDACTED]

Desai Decl., Ex. 6 (GOOG-KZGA-00002374) at 2374.

9. As of October 5, 2005, Ms. Austin was working in Google’s “Office of the Google Founders.” As of October 5, 2005, Christopher Sacca was Google’s Head of Special Initiatives. <https://www.linkedin.com/in/jenifer-austin>; <https://www.linkedin.com/in/chrissacca/>.

10. In April 2006, Ms. Austin became a “Product Manager” for Google Maps and Google Earth. As part of her work on Google Maps and Google Earth, she “launched the first time ever waterfront Street View collection of the San Francisco shoreline.” <https://www.linkedin.com/in/jenifer-austin>.

11. Before leaving Google in December 2007, Christopher Sacca was involved in managing Google Maps and Google Earth. Desai Decl., Ex. 9.

12. On November 10, 2005, David Lee, Principal of New Business Development at Google, responded to Kewazinga, stating: “i work at google and received your email you sent to

sergey and larry on oct. 5. how do you envision working with google? please let me know via email. thanks much for your inquiry. your technology looks very cool!” Desai Decl., Ex. 10 (KEWAZINGA-G-0003187) at 3187.

13. In January 2006, Kewazinga sent an email to Google with the subject “Kewazinga Strategic Plan,” attaching three documents with information about Kewazinga’s intellectual property, technology, and forward-looking business concepts. (KEWAZINGA-G-0002996 (attaching KEWAZINGA-G-0002997, KEWAZINGA-G-0003007, and KEWAZINGA-G-0003017). This included a PowerPoint presentation entitled “Strategic Plan,” each slide of which was marked “Confidential.” Desai Decl., Ex. 64 (KEWAZINGA-G-0002997).

14. In its January 2006 disclosures to Google, Kewazinga identified that it had patents on navigable telepresence technology with a priority date of April 2, 1998, which were the ‘226 and ‘325 patents. KEWAZINGA-G-0003007 at 3015; Desai Decl., Ex. 64 (KEWAZINGA-G-0002997) at 3002. In those disclosures, Kewazinga identified the ‘226 and ‘325 patents by their titles, assignee, issue dates, and subject matter. KEWAZINGA-G-0003007 at 3015; Desai Decl., Ex. 5 (Smalheiser Tr.) at 227:21-229:16.

15. In communications between Kewazinga and Google in 2005 and 2006, Kewazinga disclosed its confidential and proprietary technology and business ideas to Google. Desai Decl., Ex. 5 (Smalheiser Tr.) at 227:21-229:16. In several of those communications, Google expressed interest in Kewazinga’s technology and encouraged Kewazinga to disclose more of its confidential and proprietary information to Google. Desai Decl., Ex. 1 (Worley Tr.) at 88:22-90:20; Desai Decl., Ex. 5 (Smalheiser Tr.) at 227:21-229:16.

16. For example, Google employees reached out to Kewazinga, asking Kewazinga to further describe its technology and potential partnership with Google. KEWAZINGA-G-

0002924 (David Lee from Google emailing Kewazinga, stating “I work with Jennifer on video-related matters and she forwarded the email you sent to her. Can we set up a time where you can walk thru the demo and explain how we might work together?”).

17. Google employees forwarded Kewazinga’s materials to more senior individuals at Google. *See* KEWAZINGA-G-0003032 (“Thank you so much for helping to get our information in front of Mr. Vinton Cerf.”); KEWAZINGA-G-0003090. Google hired Vinton Cerf around September 2005 and has publicly described him as “one of the great technology leaders of our time.” http://googlepress.blogspot.com/2005/09/cerfs-up-at-google_08.html.

18. Google employees forwarded Kewazinga’s materials to Google’s corporate development team. KEWAZINGA-G-0003099 (Robert Macdonald from Google emailing Kewazinga, stating “I have forwarded this information to our corp dev team. They are reviewing right now and discussing internally best next steps. Let’s touch base later this week to discuss.”); KEWAZINGA-G-0003093 (Robert Macdonald from Google emailing Kewazinga, stating “I am traveling most of the week and I have passed on all of your information to our corp dev team.”).

19. In June 2006, Kewazinga sent Google an “Updated Strategic Plan” to further describe the “strategic fit that we envision with regard to Google and Navigable Telepresence.” KEWAZINGA-G-0003018; Desai Decl., Ex. 20 (KEWAZINGA-G-0003019).

20. Kewazinga’s June 2006 Strategic Plan disclosed:

Google Earth and Google Maps

Navigable Video will vastly extend the reach of Google Earth and Google Maps by providing an on-the-ground telepresence extension that allows viewers to dynamically explore world environments as though they were physically at that location. Miniaturized systems mounted on vehicles and boats will ply the streets and waterways of cities and locales, giving armchair travelers the ability to experience the sights and sounds of live or prerecorded environments as though they were there. Kewazinga’s telepresence technology will allow users to actually move through and around environments, not just zoom in from a fixed position. (Desai Decl., Ex. 20 (KEWAZINGA-G-0003019) at 3022.)

21. Kewazinga's June 2006 Strategic Plan disclosed:

Strategic Fit – We believe that our proprietary telepresence technology can help Google to deliver a truly immersive and navigable video experience that will fundamentally redefine how people experience video content and explore the world. We can provide Google with a revolutionary on-the-ground extension for Google Earth and Google Maps that allows viewers to dynamically explore world environments as through they were physically there – presenting a formidable challenge to competitors while offering tremendous revenue potential. (Desai Decl., Ex. 20 (KEWAZINGA-G-0003019) at 3019.

22. Kewazinga's June 2006 Strategic Plan disclosed:

Museums, Zoos & Aquariums and other great institutions of culture and education will use Kewazinga's technology to allow viewers to explore their assets 24/7 from anywhere in the world, vastly expanding access and creating intimate relationships that encourage and promote learning and appreciation. (Desai Decl., Ex. 20 (KEWAZINGA-G-0003019) at 3026.)

23. Kewazinga's June 2006 Strategic Plan disclosed:

Scope of the patented methods and systems

As discussed below, the Kewazinga patents cover both methods of and systems for the capture, processing and playback of navigable multi-camera video that was captured using a series of video cameras that provide progressively different perspectives of their subject matter. (Desai Decl., Ex. 20 (KEWAZINGA-G-0003019) at 3030.)

24. Kewazinga's June 2006 Strategic Plan disclosed:

Kewazinga Patents – ...

Kewazinga is the exclusive owner of two watershed patents relating to multiple camera arrays issued by the U.S. Patent and Trademark Office (PTO). Both of these patents relate to the use of multiple video camera array systems that allow navigation through and about progressively different perspectives of an event, scene or other “environment”. ...

The patents cover systems and methods of capturing, processing and playback of video using multiple cameras in a way that allows one or more viewers or operators independently to navigate through and about the scene by changing perspective from camera to camera. Kewazinga's patents cover systems that allow navigation using the cameras' original video only, as well as system enhancements that allow for virtual views to be computed and derived from multiple cameras in order to enhance transitions from camera-to-camera. (Desai Decl., Ex. 20 (KEWAZINGA-G-0003019) at 3030.)

25. Kewazinga's June 2006 Strategic Plan disclosed regarding the '226 patent:

Kewazinga's foundational patent is entitled A NAVIGABLE TELEPRESENCE METHOD AND SYSTEM UTILIZING AN ARRAY OF CAMERAS. All 119 claims in the Foundational Patent application were approved by the PTO, and the Foundational Patent issued in March 2003. The Foundational Patent allows one or more viewers or operators to navigate through and about the scene by changing perspective from camera to camera – whether the video is being viewed on a live or a recorded basis. The patent covers systems and methods of navigation using the cameras' original video – whether or not enhancements to smooth the transition from camera to camera are used. (Desai Decl., Ex. 20 (KEWAZINGA-G-0003019) at 3030.)

26. Kewazinga's June 2006 Strategic Plan disclosed regarding the '325 patent:

Kewazinga's Tweening Patent issued in February 2003. It is directed to camera array systems where tweening, mosaicing or other smoothing technique is used to provide a smooth transition from one "real" camera to the next. By way of example, the Tweening Patent covers systems and methods for seamless navigation through an array of cameras by providing "virtual" camera positions in-between each pair of adjacent real cameras. The benefits of tweening include a seamless glide-transition from camera to camera, as well as a reduction in the number of cameras needed for certain applications. (Desai Decl., Ex. 20 (KEWAZINGA-G-0003019) at 3030.)

27. Kewazinga identified the '226 and '325 patents to Google in 2006, including by providing information about the patents that could be used to find them. Desai Decl., Ex 20 (KEWAZINGA-G-0003019) at 3030; Desai Decl., Ex. 21 (Sherwood Tr.) at 55:13-56:3, 75:3-9.

28. [REDACTED] Desai Decl., Ex. 22 (GOOG-KZGA-00004875); Desai Decl., Ex. 21 (Sherwood Tr.) at 114:14-117:14.

[REDACTED] Desai Decl., Ex. 21 (Sherwood Tr.) at 58:4-10, 72:3-73:25, 114:14-117:14.

29. [REDACTED] Desai Decl., Ex. 21 (Sherwood Tr.) at 114:14-117:14.

30. Google contends that it was not aware of the '226 and '325 patents prior to the

first communication between Kewazinga and Google in 2013. Google’s 6/15/2020 Response to Kewazinga’s RFA No. 2.

31. Google contends it has never believed it infringed Kewazinga’s ‘226 or ‘325 patents or that those patents are valid. Desai Decl., Ex. 21 (Sherwood Tr.) at 40:12-25, 42:7-21, 44:10-14; Google’s 6/15/2020 Responses to Kewazinga’s RFA Nos. 10-11.

32. Google launched Street View on or around May 25, 2007. Filip Decl. ¶ 10.

33. Street View was being developed during the communications between Google and Kewazinga in 2005-2006. *See* Filip Decl. ¶¶ 6, 8. Google did not tell Kewazinga about its work on the “Cityblock” project, Street View, or Google’s development of Street View when the parties communicated in 2005-2006 or thereafter. Desai Decl., Ex. 1 (Worley Tr.) at 118:11-19.

34. On June 10, 2005, an article titled “Google backs street-imaging project” noted that “the Stanford [CityBlock] project is still at the very early stages of development” and that “Google might not even know what it wants to do with the technology yet.” <https://www.newscientist.com/article/dn7509-google-backs-street-imaging-project/>.

35. No evidence produced by Google demonstrates that Google—by virtue of its work on the “Cityblock” project or otherwise— had the idea for smoothing transitions from one location to another, the inclusion of Street View in Google Earth, the capture of imagery using cameras mounted on boats, and the inclusion of navigation of interiors (e.g., museums) in Street View prior to communications with Kewazinga. *See* Desai Decl., Ex. 20 (KEWAZINGA-G-0003019) at 3019, 3022, 3026, 3030.

36. [REDACTED]

[REDACTED]

[REDACTED]

GOOG-KZGA-00002093 at 2111-13

██████████ see also Google's 6/16/2020 Third Amended and Supplemental Response to Kewazinga's Interrogatory No. 1 at 11.

37. The '226 and '325 patents were filed in 1999, prior to the origin of the Stanford "Cityblock" project. Filip Decl. ¶ 4.

38. The transition of the "Cityblock" project internally to Google began in 2005, which was after the '226 and '325 patents issued in 2003. Filip Decl. ¶ 5.

39. Street View is a feature included in Google Maps. GOOG-KZGA-00001576 (<https://maps.googleblog.com/2007/05/introducing-street-view.html>).

40. Street View is a feature included in Google Earth. GOOG-KZGA-00001633 (<https://maps.googleblog.com/2008/04/introducing-google-earth-43.html>). Street View was incorporated into Google Earth in or around April 2008. *Id.*

41. Street View allows users to "virtually explore city neighborhoods by viewing and navigating within 360-degree scenes of street-level imagery. It feels as if you're walking down the street!" GOOG-KZGA-00001576 (<https://maps.googleblog.com/2007/05/introducing-street-view.html>); Desai Decl., Ex. 21 (Sherwood Tr.) at 81:12-82:10; Desai Decl., Ex. 24 (Marquardt Tr.) at 83:23-84:8.

42. Google captures images for use in Street View by using cameras mounted on vehicles that capture images as the vehicles move. Desai Decl., Ex. 24 (Marquardt Tr.) at 79:9-15.

43. Street View includes imagery captured by cameras mounted on boats. KEWAZINGA-G-0005820 (<https://www.blog.google/products/maps/street-view-floats-into-venice/>); Desai Decl., Ex. 24 (Marquardt Tr.) at 115:9-118:24.

44. Street View includes imagery allowing users to navigate interiors including, for example, museums. KEWAZINGA-G-0006102 (<https://googleblog.blogspot.com/2012/04/going-global-in-search-of-great-art.html>); Desai Decl., Ex. 24 (Marquardt Tr.) at 121:19-126:4.

45. Street View includes a transition animation effect when a user moves from one location to another in Street View, which makes those transitions smoother and “create[s] the effect of gliding smoothly to the next location.” GOOG-KZGA-00006200 (<https://cloud.google.com/blog/products/maps-platform/new-javascript-street-view-renderer>); Desai Decl., Ex. 24 (Marquardt Tr.) at 109:16-19.

46. Kewazinga patents (including the ‘226 patent) and applications have been cited during the prosecution of Google’s own patents including U.S. Patent Nos. 8,125,481; 9,294,757; 10,033,992; 8,823,707; and 9,473,745.

47. [REDACTED]

KEWAZINGA-G-0003191. [REDACTED]

Id.

48. [REDACTED]

[REDACTED] GOOG-KZGA-00002960. [REDACTED]

[REDACTED] Desai Decl., Ex. 21 (Sherwood Tr.) at 145:13-146:13. [REDACTED]

[REDACTED] Desai Decl., Ex. 21 (Sherwood Tr.) at 146:10-13.

49. On May 24, 2013, Kewazinga filed a lawsuit against Google in the District of Delaware alleging infringement of the ‘226 and ‘325 patents (“2013 Action”).

50. On May 28, 2013, Kewazinga's counsel informed Google that Kewazinga had filed a lawsuit against Google in the District of Delaware alleging infringement of the '226 and '325 patents. KEWAZINGA-G-0003388.

51. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Desai Decl., Ex. 41 (KEWAZINGA-G-0003277) at 3277. [REDACTED]
[REDACTED] *Id.*

52. Representatives of Google and Kewazinga met in person on August 19, 2013 to discuss Kewazinga's patents and the 2013 Action. *See* KEWAZINGA-G-0003374. At the parties' in-person meeting, representatives of Google, including Mr. Sherwood, contended that Street View did not infringe because it did not have an "array of cameras." Desai Decl., Ex. 21 (Sherwood Tr.) at 169:11-170:6; Desai Decl., Ex. 1 (Worley Tr.) at 142:6-143:3. At the meeting, representatives of Kewazinga disagreed with Google's position and maintained that Google infringed the '226 and '325 patents. Desai Decl., Ex. 21 (Sherwood Tr.) at 166:3-167:12; Desai Decl., Ex. 1 (Worley Tr.) at 142:6-144:3.

53. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Sherwood Decl., Ex. 9).

54. Neither Kewazinga nor its counsel ever told Google (1) that Kewazinga no longer believed that Google infringed the '226 and '325 patents; (2) that Kewazinga agreed that Google did not infringe those patents; or (3) that Kewazinga believed its infringement assertion to be weak. Desai Decl., Ex. 21 (Sherwood Tr.) at 176:15-177:17; Desai Decl., Ex. 1 (Worley Tr.) at 142:6-144:31; Google's 6/15/2020 Responses to Kewazinga's RFA Nos. 6, 7.

55. Google filed a motion to dismiss the 2013 Action for failure to serve the complaint within the time period required by Fed. R. Civ. P. 4(m). KEWAZINGA-G-0003524. Google's motion to dismiss the 2013 Action omitted the fact that the dismissal would be without prejudice, as required by Fed. R. Civ. P. 4(m). *See id.* at 3525-27.

56. [REDACTED]

[REDACTED] Desai Decl., Ex. 21 (Sherwood Tr.) at 183:1-185:11.

57. Kewazinga filed a non-opposition to Google's motion to dismiss, emphasizing that the dismissal was without prejudice, stating:

After filing this action and up until Google's filing of the Motion, Plaintiffs and Google were engaged in settlement discussions. Consequently, Kewazinga had no intention of serving Google.

Notwithstanding the foregoing and in light of the Motion, Plaintiffs do not oppose the dismissal of this action without prejudice. (Sherwood Decl., Ex. 10 (emphasis in original).)

58. Kewazinga's non-opposition did not indicate that Kewazinga was abandoning its

right to pursue its infringement claims against Google in the future because Kewazinga expressly emphasized that the dismissal was “without prejudice.” Sherwood Decl., Ex. 10.

59. After the dismissal of the 2013 Action, Kewazinga continued to prosecute patent applications in the same family as the ‘226 and ‘325 patents and Google was aware of this. Sherwood Decl. ¶ 13; Sherwood Decl., Ex. 9. This included the prosecution of U.S. Patent Application No. 14/505,208, which was filed on October 2, 2014 and claimed priority to the ‘226 and ‘325 patents, and which issued as the ‘234 patent on June 9, 2015. ‘234 patent at pgs. 1-2. The prosecution of these applications is matter of public record.

60. Google contends that it had no knowledge of the ‘234 patent until 2018. Google’s 6/15/2020 Response to Kewazinga’s RFA No. 27.

61. Google and Kewazinga never communicated about the ‘234 patent or the patent application that issued as the ‘234 patent prior to the current lawsuit.

62. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Desai Decl., Ex. 21 (Sherwood Tr.) at 243:23-244:3; *id.* at 201:1-9.

63. [REDACTED]

[REDACTED]

[REDACTED]

Desai Decl., Ex. 21 (Sherwood Tr.) at 199:9-14; *id.* at 201:10-18.

64. [REDACTED]

[REDACTED]

[REDACTED]

Google's 6/9/2020 Responses to Kewazinga's 30(b)(6) Topics at No. 6; *see also* Desai Decl., Ex. 21 (Sherwood Tr.) at 18:7-13. [REDACTED]

[REDACTED]

Desai Decl., Ex. 21 (Sherwood Tr.) at 209:17-210:1. [REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 210:2-212:9.

65. [REDACTED] Desai Decl., Ex. 21 (Sherwood Tr.) at 206:19-207:4. [REDACTED]

[REDACTED] *Id.* at 209:7-9. [REDACTED]

[REDACTED] *Id.* at 205:1-7. [REDACTED]

[REDACTED] Sherwood Decl., Ex. 12 at 2672; Desai Decl., Ex. 21 (Sherwood Tr.) at 203:25-206:3.

66. [REDACTED]

[REDACTED] Desai Decl., Ex. 21 (Sherwood Tr.) at 25:13-26:4, 27:11-28:8.

67. [REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 60:13-61:10, 63:12-64:1.

68. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Desai Decl., Ex. 21 (Sherwood Tr.) at 248:21-249:9; *id.* at 242:16-19, 246:6-9.

69. There was no bar to Google filing a declaratory judgment against Kewazinga after the dismissal of the 2013 Action.

70. There was, and is currently, no bar to Google filing petitions for *inter partes* review (“IPR”) of the ‘226 and ‘325 patents after the dismissal of the 2013 Action because the complaint in the 2013 Action was not served on Google. 35 U.S.C. § 315(b).

71. Street View became “one of Google Maps’ most popular features” by 2009. GOOG-KZGA-00001671 (<https://maps.googleblog.com/2009/08/take-peek-at-our-new-street-view-site.html>).

72. [REDACTED]

Desai Decl., Ex. 45 (GOOG-KZGA-00002115) at 2124. [REDACTED]

[REDACTED] *Id.*

[REDACTED]

Id.

73. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Desai Decl.,
Ex. 45 (GOOG-KZGA-00002115) at 2124.

74. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Desai Decl., Ex. 45 (GOOG-KZGA-00002115) at 2116. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Desai Decl., Ex.
24 (Marquardt Tr.) at 75:16-76:12, 160:9-161:14, 162:5-12.

75. [REDACTED]

[REDACTED] Desai Decl., Ex. 45 (GOOG-KZGA-00002115) at 2125.

76. [REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 265:4-267:9.

77. In June 2008, Google stated “To celebrate Street View’s one year birthday, I am very happy to announce we are bringing Street View to 37 (you heard me – 37!) new areas and we have expanded coverage in 15 of our existing areas. All in all, this effectively doubles our coverage.” GOOG-KZGA-00001869 (<https://maps.googleblog.com/2008/06/street-view-turns-1-keeps-on-growing.html>).

78. In June 2011, Google stated “Since we launched Street View on Google Maps in the U.S. in 2007, we’ve added 26 more countries and enabled you to explore images across all seven continents. Today we’re excited to share with you the latest expansion of Street View because it’s our biggest update yet. ... Be it for armchair travel from the comfort of your

computer, or to figure out where you might want to visit on your next vacation, we're thrilled to continue our expansion of Street View." GOOG-KZGA-00001829 (<https://maps.googleblog.com/2011/06/street-view-our-biggest-update-yet.html>).

79. [REDACTED]

[REDACTED] GOOG-KZGA-00005181. [REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED] *Id.*

80. Kewazinga has at no point had actual knowledge of Google's investments in Street View. Desai Decl., Ex. 1 (Worley Tr.) at 172:15-174:18; Desai Decl., Ex. 5 (Smalheiser Tr.) at 54:3-56:17.

81. [REDACTED]

[REDACTED] Google's 6/15/2020 Responses to Kewazinga's RFA Nos. 12, 14.

82. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Desai Decl., Ex. 21 (Sherwood Tr.) at 44:1-9 (objections omitted); *see also id.* at 41:1-23, 42:22-43:7, 44:15-21; *see also* Google's 6/9/2020 Responses to Kewazinga's 30(b)(6) Topics at Nos.

11, 12, 17; Desai Decl., Ex. 21 (Sherwood Tr.) at 18:7-13.

83. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Desai Decl., Ex. 21 (Sherwood Tr.) at 252:11-16 (objection omitted); *id* at 251:2-252:10.

84. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Desai Decl., Ex. 24 (Marquardt Tr.) at 257:17-259:25; *see also* Google's 6/9/2020 Responses to Kewazinga's 30(b)(6) Topics at Nos. 10, 16; Desai Decl., Ex. 24 (Marquardt Tr.) at 11:6-15.

85. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Desai

Decl., Ex. 21 (Sherwood Tr.) at 146:10-13, 153:11-154:20, 156:1-17, 173:19-174:21; Desai Decl., Ex. 24 (Marquardt Tr.) at 257:17-259:25.

86. [REDACTED]

(Sherwood Decl. ¶¶ 9, 18) [REDACTED]

[REDACTED] Sherwood Decl., Ex. 6; Sherwood Decl., Ex. 7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Sherwood Decl. ¶ 10; *id.*, Ex. 8 at 2719. [REDACTED]

[REDACTED] Sherwood Decl. ¶ 10; *id.*, Ex. 8 at 2719.

87. [REDACTED]

[REDACTED] Desai Decl., Ex. 21 (Sherwood Tr.) at 109:22-111:4. For example, Google was sued for patent infringement in 2010 because of Street View in *Vederi, LLC v. Google, Inc.*, Case No. 2:10-cv-07747 (C.D. Cal.). KEWAZINGA-G-0006394 (showing case pending for over nine years); KEWAZINGA-G-0006423 at 6424. Additionally, Google was sued for patent infringement in 2011 because of Street View in *Transcenic, Inc. v. Google, Inc. et al.*, Case No. 1:11-cv-00582 (D. Del.). KEWAZINGA-G-0006331 (showing case pending for nearly four years; KEWAZINGA-G-0006622 at 6625-26.

88. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Desai Decl., Ex. 21 (Sherwood Tr.) at 110:11-111:4; *see also* Desai Decl., Ex. 24 (Marquardt Tr.) at 255:23-257:4, 260:1-261:22.

89. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 221:18-222:6, 257:17-259:25; *see also* Google's 6/9/2020 Responses to Kewazinga's 30(b)(6) Topics at Nos. 10, 16; *see also* Desai Decl., Ex. 24 (Marquardt Tr.) at 11:6-15.

90. [REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 45 (GOOG-KZGA-00002115) at 2116, 2167; Desai Decl., Ex. 24 (Marquardt Tr.) at 205:7-207:5.

91. [REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 172:14-174:21, 176:12-19, 177:1-181:9, 221:18-222:6.

92. [REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 45 (GOOG-KZGA-00002115) at 2116, 2123; Desai Decl., Ex. 24 (Marquardt Tr.) at 172:4-173:10.

93. [REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 45 (GOOG-KZGA-00002115) at 2123, 2126, 2127, 2138; Desai Decl., Ex. 24 (Marquardt Tr.) at 172:14-173:10.

94. [REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 45 (GOOG-KZGA-00002115) at 2116, 2126, 2127; Desai Decl.,

Ex. 24 (Marquardt Tr.) at 176:12-19.

95. [REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 45 (GOOG-KZGA-00002115)
at 2116, 2117, 2125, 2127, 2167, 2168; Desai Decl., Ex. 24 (Marquardt Tr.) at 177:1-181:9.

96. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 45 (GOOG-KZGA-00002115) at 2118, 2127, 2167; Desai Decl.,
Ex. 24 (Marquardt Tr.) at 207:6-208:18.

97. [REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 45 (GOOG-KZGA-00002115) at 2124, 2125; Desai Decl., Ex. 24
(Marquardt Tr.) at 199:17-200:6.

98. Google has never stopped offering Street View in the United States.

99. [REDACTED]

[REDACTED]

(Desai Decl., Ex. 24 (Marquardt Tr.) at 11:6-15), [REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 236:13-17.

100. [REDACTED]

[REDACTED]

(Desai Decl., Ex. 24 (Marquardt Tr.) at 11:6-15), [REDACTED]

[REDACTED]
[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 236:18-237:13.

101. [REDACTED]
[REDACTED]

(Desai Decl., Ex. 24 (Marquardt Tr.) at 11:6-15), [REDACTED]
[REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.)
at 254:9-16.

102. [REDACTED]
[REDACTED]

GOOG-KZGA-00006219. [REDACTED]

[REDACTED] *Id.* at 6226.

103. [REDACTED]
[REDACTED]

(Desai Decl., Ex. 24 (Marquardt Tr.) at 11:6-15), [REDACTED]
[REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt
Tr.) at 243:15-22.

104. [REDACTED]
[REDACTED]

(Desai Decl., Ex. 24 (Marquardt Tr.) at 11:6-15), [REDACTED]
[REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 243:23-244:5.

105. [REDACTED]

[REDACTED]

(Desai Decl., Ex. 24 (Marquardt Tr.) at 11:6-15), [REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 244:10-245:25.

106. [REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 246:12-15.

107. [REDACTED]

[REDACTED]

(Desai Decl., Ex. 24 (Marquardt Tr.) at 11:6-15), [REDACTED]

[REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 246:16-24, 250:1-15.

108. [REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 250:10-252:5.

109. [REDACTED]

[REDACTED] Desai Decl., Ex. 24 (Marquardt Tr.) at 252:14-16.

110. Stroock & Stroock & Lavan LLP (“Stroock”) represented Orchard Enterprises NY, Inc. (“The Orchard”) in a copyright infringement action brought by Seugne Botha in the Middle District of Florida (“2018 Orchard Action”). Sammataro Decl. ¶ 4. In addition to The Orchard, Botha’s complaint named several other defendants including, *inter alia*, Amazon, Spotify, Microsoft, and Google. *Id.* James Sammataro, a former Stroock attorney, was the partner in charge of Stroock’s representation of The Orchard. *Id.* ¶ 5; *see also id.* ¶ 2.

111. [REDACTED] Sammataro Decl. ¶ 5.

[REDACTED] *Id.* [REDACTED]

[REDACTED]

112. [REDACTED]

[REDACTED] Sammataro Decl. ¶ 6; Sherwood Decl., Ex. 14 at 2361-63.

113. [REDACTED]

[REDACTED] Desai Decl., Ex. 55 (GOOG-KZGA-00004366) at 4366. [REDACTED]

[REDACTED] Sherwood Decl. ¶¶ 3, 12. [REDACTED]

[REDACTED] Desai Decl., Ex. 55 (GOOG-KZGA-00004366) at 4366; Desai Decl., Ex. 21 (Sherwood Tr.) at 217:11-218:2.

114. [REDACTED]

[REDACTED] (Desai Decl., Ex. 56 (GOOG-KZGA-00004369) at 4369.)

Desai Decl., Ex. 21 (Sherwood Tr.) at 221:10-16, 222:18-223:13; *see also* Desai Decl., Ex. 55 (GOOG-KZGA-00004366); *see also* Desai Decl., Ex. 57 (GOOG-KZGA-00004373) [REDACTED]

[REDACTED]

115. [REDACTED]

[REDACTED] Sammataro Decl. ¶ 8; Sherwood Decl., Ex. 14 at 2359-60. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Sammataro Decl. ¶ 8; Sherwood Decl., Ex. 14 at 2359-60. Mr. [REDACTED]
[REDACTED]
[REDACTED] Sammataro Decl. ¶ 10; Sherwood
Decl., Ex. 14 at 2359-60. [REDACTED]
[REDACTED]
[REDACTED] Desai Decl., Ex.
56 (GOOG-KZGA-00004369) at 4369.

116. [REDACTED]
[REDACTED] Sammataro Decl. ¶ 9. [REDACTED]
[REDACTED]
[REDACTED] *Id.* ¶¶ 9-10. [REDACTED]
[REDACTED] *Id.* ¶¶ 9-10.

117. [REDACTED]
[REDACTED]
[REDACTED] (Sherwood Decl., Ex. 14 at 2360) [REDACTED]
[REDACTED] Sammataro Decl. ¶ 10.

118. [REDACTED]
Sherwood Decl., Ex. 15. [REDACTED]
[REDACTED]
Sammataro Decl. ¶ 11; Sherwood Decl., Ex. 15 at 2366. [REDACTED]
[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

119.

[REDACTED]

[REDACTED] as the plaintiff reached a settlement with nearly all of the co-defendants, including Google, on September 29, 2018. Sammataro Decl. ¶ 12.

120.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Sammataro Decl. ¶ 13.

121.

[REDACTED]

[REDACTED] Desai Decl., Ex. 21 (Sherwood Tr.) at 234:17-21.

122.

[REDACTED]

[REDACTED] Sammataro Decl. ¶ 13.

123.

[REDACTED]

[REDACTED] Desai Decl., Ex. 21 (Sherwood Tr.) at 235:5-10.

124. In this litigation, Kewazinga is seeking reasonable royalty damages, not lost profits. Kewazinga's April 30, 2020 Rule 26(a)(1) Initial Disclosures at 8.

125. Stroock's security interests in the '226, '325, and '234 patents were executed in January 2016 and are a matter of public record. KEWAZINGA-G-0000088 at 88-89; KEWAZINGA-G-0000122 at 122-23; KEWAZINGA-G-0000156 at 156.

126.

[REDACTED] (D.I. 59 at 20; D.I. 63 ¶ 85)

[REDACTED]

Dated: New York, New York
August 5, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2020, I caused a true and correct copy of the foregoing **PLAINTIFF KEWAZINGA CORP.'S LOCAL CIVIL RULE 56.1 STATEMENT OF MATERIAL FACTS IN SUPPORT OF KEWAZINGA'S CROSS-MOTION FOR SUMMARY JUDGMENT OF NO EQUITABLE ESTOPPEL** to be filed and served electronically by means of the Court's CM/ECF system in accordance with Federal Rules of Civil Procedure and/or the Local Rules of this Court, upon the following counsel of record:

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